UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BALANCE CFO LLC, *Plaintiff,* v PRIORITY CONCEPTS INC., and "JOHN DOE" *Defendants.*	)	Civil Action No.: 2:24-cv-1381

PLAINTIFF'S ORIGINAL COMPLAINT
(Jury Trial Demanded)

Balance CFO LLC, by and through its undersigned counsel, brings this Complaint for copyright infringement against Defendants, Priority Concepts Inc., and "John Doe" (Collectively "Defendants") for damages and injunctive relief, and states as follows:

SUMMARY OF THE ACTION

1. Balance CFO LLC ("Balance CFO" or "Plaintiff") brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 101, *et seq*. in connection with, *inter alia*, the improper use, copy, display, and distribution of their original copyrighted works of authorship (each individually a "Work" and collectively "the Works").

2. This is a case of willful copyright infringement in violation of 17 U.S.C. § 501, *et seq*. Balance CFO seeks compensatory damages in an amount to be established at trial, and reimbursement of its costs under the Copyright Act.

3. Balance CFO further seeks temporary and permanent injunctive relief in order to put an end to Defendants' numerous, repeated, and ongoing acts of willful infringement of Balance CFO's exclusive rights.

PARTIES

4. Balance CFO is a successful national financial literacy education company for small businesses. Balance CFO's principal place of business is located at 2000 Mallory Ln. Ste. 290 PMB 1126, Franklin, TN 37067-6287.

5. Priority Concepts Inc. ("Priority Concepts") offers calculations and filing services for the federal Employee Retention Tax Credit ("ERTC"), as well as refund advances to qualifying clients. On information and belief, Priority Concepts is a New York corporation with its principal place of business located at 515 Broadhollow Road, Melville, NY 11747. On information and belief, Priority Concepts is the registrant, owner, and operator of a website found at the principal URL https://prioritycconceptsinc.com/.

6. On information and belief, "John Doe" is an employee, agent, affiliate, or partner, subsidiary, or holding company of Priority Concepts, whose identity is not presently known, and who participated in the copyright infringement of Balance CFO's proprietary Works.

7. On information and belief John Doe is a presumed agent of one or more "ERTC Mills" (as that term is defined in Paragraph 26 below) who we believe are working in concert with Priority Concepts to use, copy, reproduce, and distribute Plaintiff's Works to conduct ERTC services.

JURISDICTION AND VENUE

8. This is a civil action seeking damages and injunctive relief for willful copyright infringement under the Copyright Act under 17 U.S.C. §101 *et. seq.*

9. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a) because it involves federal questions arising under the Copyright Act, as amended, 17 U.S.C. §§ 101 *et seq*.

10. This Court has personal jurisdiction over Defendants. On information and belief, Defendants have conducted tortious acts of infringement in the Eastern District of New York, conducted acts directed at the District, and/or transacted or done business in the District.

11. Priority Concepts is "at home" in the District because the principal place of business and/or place of formation is in the District.

12. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because Priority Concepts conducts substantial business within the Eastern District of New York, Priority Concepts engaged in infringement in this District, and a substantial part of the events giving rise to the claims asserted herein occurred in this District.

13. On information and belief, pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because John Doe conducts substantial business within the Eastern District of New York, John Doe engaged in infringement in this District, and a substantial part of the events giving rise to the claims asserted herein occurred in this District.

GENERAL ALLEGATIONS

14. Balance CFO sells digital products, online courses, and resources for small businesses via their website, https://jamietrull.com/ (the "Website"), including toolkits for businesses who wish to implement cost-saving and other financial strategies on a do-it-yourself basis. In response to the ERTC, Plaintiff created an ERTC Calculator resource to support small business owners' understanding of the ERTC and enable small business owners to calculate their own eligibility under the ERTC ("ERTC Calculator").

15. Plaintiff is author of two original works at issue, titled 1) ERTC Calculator April 2021 ("ERTC Apr. Work", and 2) ERTC Calculator November 2021 ("ERTC Nov. Work", collectively, the "Works"). True and accurate excerpts of the ERTC Apr. Work are attached hereto as Exhibit C. True and accurate excerpts of the ERTC Nov. Work are attached hereto as Exhibit D.

16. Balance CFO's Works are the subject of valid Certificates of Registration, Nos. TX 9-324-734 and No. TX 9-326-085, issued by the Register of Copyrights. Balance CFO satisfied statutory formalities under Title 17, and obtained the Certificates for the Works, each having an effective date of September 1, 2023 (the "Registrations"). True and accurate copies of the Copyright Office Registration Certificates applicable to the copyrighted Works are attached here as Exhibit A and Exhibit B.

17. The copyrighted Works are each an original work of authorship, fixed in a tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of the machine or a device, and are original, distinctive, and unique. As such, the Works embody copyrightable subject matter, entitled to the full protection of the Copyright Act.

18. Balance CFO is, and at all relevant times has been the exclusive owner of, all rights, titles, and interests, including the exclusive copyrights, in and to the copyrighted Works.

19. Among the exclusive rights granted to Balance CFO under the Copyright Act are the exclusive rights to reproduce the Works in copies, display the Works publicly, and create derivative works of the Works, as well as the right of exclusive licensor of the Works.

20. The Works contain extensive directions and guidance, including flow charts, that simplify complex computations and tax regulations into a usable resource that walks a small

business owner with no tax background through the ERTC process with understanding and confidence.

21. Balance CFO created the Works by synthesizing complex tax concepts and calculations specifically to create an easy-to-use resource for small business owners to understand the rules to qualify for the ERTC, determine their eligibility under the ERTC, and estimate the tax credit they might be eligible to claim, on their own.

22. Plaintiff priced the Works at $27 to encourage access by small business owners for their own personal use. Balance CFO required all purchasers of the Works to accept Plaintiff's terms of use ("Terms"), which grant a limited, non-exclusive, non-transferable, revocable license to use the Works, solely for the purchaser's individual use. The Terms explicitly ban the transmission, creation of derivative works, and resale of the Works, as well as commercial use. The Terms, to which all purchasers must agree prior to purchase, state the Works:

> are intended for consumer use only and not for commercial purposes (i.e. business owners may use the resources in for their own business, but these resources may not be used in client's businesses unless the client downloads or purchases the resource). If you would like to use any of these resources for commercial purposes (such as our plug-and-play worksheets), you can email us at support@balancecfo.com and inquire about purchasing licensing and/or editing rights.

23. In furtherance of its efforts to support small business owners through the complexities of the ERTC process, Balance CFO's founder Jamie Trull participated in various educational panels and webinars where Plaintiff would then offer the Works for sale to participants through its website e-commerce store.

24. Plaintiff offers licensing opportunities for the Works to accounting firms. Licensing opportunities are available by inquiry and evaluated on a case-by-case basis by Balance CFO. Licensing opportunities are offered on the product sales page for The Works, in the FAQ section,

under the question "I'm an Accountant. Can I use this for my clients?" A screenshot of the relevant portion of the FAQ, which can be found at https://sales.jamietrull.com/ertc, is attached here as Exhibit E. Plaintiff has even gone so far as to spotlight the issue of unauthorized usage in its email marketing and graciously provided a direct link for customers who may have been innocently misappropriating the Works and/or have genuine interest in licensing the Works to submit a form to be evaluated for licensing rights. Relevant examples of Plaintiff's email marketing are attached here as Exhibit F. Balance CFO never received an inquiry nor a questionnaire from Defendants regarding licensing the Works for its commercial use.

25. Priority Concepts' counsel admitted in correspondence of June 22, 2023, that Priority Concepts acquired one of the Works through an employees' attendance at a "webcast" hosted by Balance CFO. Specifically, Priority Concepts' counsel stated that "An employee of Priority Concepts paid for and participated in your client's webcast concerning ERTC credits. As part of that webcast, access was provided to an excel spreadsheet, which we assume is what you have referred to as the 'Payment Calculator.'" Priority Concepts' counsel refused to provide the name of its employee or agent who purchased one of the Works, or the date of purchase, to Plaintiff's counsel.

26. Priority Concepts provides eligibility determination assistance, calculations, and filing services for the ERTC. Priority Concepts also provides advance refund payment to qualifying clientele en masse (*see* www.prioritycconceptsinc.com) which is a telling indicator that Priority Concepts is an "ERTC Mill." The IRS has issued warnings about "ERTC mills" that use "aggressive marketing by nefarious actors," incur "fees based on a percentage of the refund amount of the Employee Retention Credit claimed," and "lure businesses, tax-exempt groups and others into applying for the credit" when they may not actually qualify for the credit ("ERTC Mills").

(*See* https://www.irs.gov/newsroom/red-flags-for-employee-retention-credit-claims-irs-reminds-businesses-to-watch-out-for-warning-signs-of-aggressive-promotion-that-can-mislead-people-into-making-improper-ERTC-claims.)

27. Priority Concepts' website actively displays many of the "warning signs" identified by the IRS; has been the subject of Better Business Bureau complaints (*see* Exhibit G) regarding incessant telemarketing to targets who are registered on www.donotcall.gov, constituting a violation of the Federal Trade Commission's Telemarketing and Consumer Fraud and Abuse Prevention Act; and on information and belief, charges hefty contingency fees to its clientele. On its website, a screenshot of which is attached here as Exhibit H, Priority Concepts asserts that it employs "The fastest preparers and tax calculators in the country! If you provide us with a full completed package, our proprietary technology and auto calculator can complete a full package summary and amended 941xs ***IN UNDER 30 SECONDS!"*** These facts present compelling evidence that Priority Concepts is predatory and a bad actor in the accounting and financial services industry taking advantage of business owners to its own benefit and using Plaintiff's Works to commit these predatory acts.

28. Balance CFO is a respected leader in the financial literacy community for small business owners. Plaintiff's YouTube channel has over 22,000 subscribers and an email subscriber list of over 50,000 subscribers. Plaintiff is known in the financial literacy community as a champion for small business owners and any known association with or connection to an "ERTC Mill" could result in unmeasurable and devastating damage to Plaintiff's goodwill and reputation as a reputable financial professional and thought leader.

29. A former employee of Priority Concepts (the "PC Employee") contacted Plaintiff on April 25, 2023, alleging that the Works were being used by Priority Concepts "to commit

fraud". The PC Employee further provided Plaintiff evidence including one of Priority Concepts' employee training videos ("Training Video") that shows Priority Concepts' staff using the Works for commercial purposes as an integral tool in providing services to many, if not all, of its clients. The Training Video also showed that Priority Concepts widely distributed the Works throughout its staff.

30. The Training Video at various points clearly shows Plaintiff's founder's name "Jamie Trull" as it appears on the Works. A true and correct copy of a screenshot from the Training Video is attached here as Exhibit I.

31. In the Training Video, Priority Concepts' staff trains its employees on how to use Balance CFO's Works to serve Priority Concepts' clients by determining a client's eligibility and calculating refund amounts under the ERTC. These are the core services Priority Concepts' business offers, and through which Priority Concepts has generated substantial revenues.

32. The Training Video also shows that Priority Concepts has created multiple derivative works of the Works, adding tabs for "PPP," "2020 Weekly Payroll," and "2021 Weekly Payroll" for various clients, and potentially others that are not visible on the Training Video.

33. On information and belief, Defendants have created a software platform based on Plaintiff's Works, creating an unauthorized derivative work.

34. On information and belief, Defendants have infringed and are infringing the copyrights in the Works by unlawfully reproducing, displaying, and creating derivative works of the Works, in violation of the United States Copyright Act, 17 U.S.C. § 106 *et. seq*.

35. Defendants' reproduction of the Works, their distribution, and creation of derivative works have been without Balance CFO's permission, license, or authorization.

36. Defendants have profited from the reproduction of the copyrighted Works, their distribution, and the creation of derivative works from the Works.

37. On information and belief, Defendants are sophisticated, have knowledge of copyright laws, and have access to legal counsel.

38. Balance CFO was unsuccessful in its reasonable pre-litigation attempts to resolve this matter, let alone to compel Priority Concepts to cease use, thereby necessitating this lawsuit.

39. The natural and probable foreseeable result of Defendants' wrongful conduct has been to deprive Plaintiff of the benefits of licensing the Work, and to injure Plaintiff's relationship with present and prospective customers.

40. Defendants' reproduction and use of Plaintiff's Work and Defendants' wrongful conduct have also deprived and continues to deprive Plaintiff of the opportunity of expanding its good will.

41. Defendants' infringements were and are willful, in bad faith, and executed with full knowledge of Plaintiff's copyrights, and in conscious disregard for Plaintiff's exclusive rights in the protected Works.

42. Defendants' deliberate infringement of Plaintiff's copyright has greatly and irreparably damaged Plaintiff, and Defendants will continue to damage Plaintiff greatly and irreparably unless enjoined by this Court. In the absence of injunctive relief, Plaintiff will have no adequate remedy at law. Accordingly, Plaintiff is entitled to a temporary and permanent injunction in accordance with 17 U.S.C. § 502.

43. On information and belief Defendants and other ERTC Mills are acting in concert to copy, use, display, distribute Plaintiff's Works, as well as make derivative works from Plaintiff's Works.

44. On information and belief, in May 2022, a presumed agent of one or more unnamed ERTC Mills ("Agent") contacted Balance CFO via email recruiting Plaintiff to become an ERTC referral partner. Balance CFO was not interested in the offer and affirmatively ignored it.

45. On information and belief, in January 2023, Agent again contacted Plaintiff via a different email address inquiring about the ability to use Plaintiff's Works for an ERTC business. Plaintiff reviewed Agent's business and determined that it would not license the Works to Agent for commercial use. Plaintiff informed the Agent by email that their request to license the Works was denied and further warned Agent about the ethics of charging percentage-based fees.

46. On information and belief, Defendants, in concert with and other ERTC Mills, used, copied, displayed, distributed, and created derivative works from Plaintiff's Works without Plaintiff's authorization.

47. On information and belief, Defendants, in concert with other ERTC Mills, have trained agents and referral partners to calculate ERTC amounts with Plaintiff's Works.

48. On information and belief, Plaintiff's Works were used, copied, displayed, and distributed between various other ERTC Mills without Plaintiff's knowledge or consent.

49. On information and belief, Defendants, in concert with other ERTC Mills, have infringed the copyrights in the Works by unlawfully using, copying, displaying, distributing, and creating derivative works from the Works, in violation of the United States Copyright Act, 17 U.S.C. § 106 *et. seq*.

50. On information and belief, this concerted wrongful conduct by Defendants and other ERTC Mills, specifically, but not limited to, the reproduction and use of Plaintiff's Works, have deprived and continue to deprive Plaintiff of the opportunity of expanding its good will in the financial services industry.

51. On information and belief, this concerted and deliberate infringement of Plaintiff's copyrights by Defendants and other ERTC Mills have greatly and irreparably damaged Plaintiff and will continue to damage Plaintiff greatly and irreparably unless enjoined by this Court. In the absence of injunctive relief, Plaintiff will have no adequate remedy at law. Accordingly, Plaintiff is entitled to a temporary and permanent injunction in accordance with 17 U.S.C. § 502.

COUNT I: DIRECT COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS

52. Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Original Complaint as if fully and completely set forth herein.

53. Plaintiff is the owner of valid and registered copyrights in the Works at issue in this case.

54. Plaintiff registered the Works with the Register of Copyrights pursuant to 17 US.C. § 411(a). A true and correct copy of the Certificates of Registration from the U.S. Copyright Office are attached as Exhibits A and B hereto.

55. At no time has Plaintiff authorized Defendants to reproduce, distribute, or prepare derivative works of the Works or any portion thereof.

56. By a volitional act, Defendants copied, distributed, and created derivative works of the Works without Balance CFO's permission.

57. Defendants are willfully infringing Plaintiff's copyrights in the Works by reproducing, distributing, and creating derivative works of the Work without permission in violation of the Copyright Act, 17 U.S.C. § 106.

58. On information and belief, Defendants' infringements have continued after Plaintiff put Priority Concepts on notice of its rights, therefore the infringement is willful, executed with

full knowledge of Plaintiff's copyright, and in conscious disregard of Plaintiff's exclusive rights in its protected Works.

59. Defendants' actions were performed in the course and scope of their business activities.

60. Defendants' infringements of Balance CFO's exclusive rights in the copyrighted Works are willful and deliberate and Defendants have profited from their infringement at the expense of Balance CFO.

61. As a direct and proximate result of Defendants' infringement of Balance CFO's exclusive copyrights in the copyrighted Works, Balance CFO has suffered injuries and damages, and is entitled to actual damages, Defendants' gross revenue or profits, direct or indirect, derived by Defendants that are attributable to Defendants' direct infringement of the Works, pursuant to 17 U.S.C. § 504(b).

62. Defendants' infringing conduct has caused substantial injury to Balance CFO and any additional infringing conduct would cause irreparable harm to Balance CFO.

63. Defendants' willful and intentional infringement benefitted its business and creates a substantial risk that Defendants will continue to infringe Balance CFO's exclusive rights in the copyrighted Works, in order to obtain a competitive advantage and to profit at the expense of Balance CFO.

64. Plaintiff has no adequate remedy at law to end this ongoing infringement. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting further infringement by the Defendants of Plaintiff's exclusive copyrights, including its rights in the copyrighted Works.

COUNT II - VICARIOUS COPYRIGHT INFRINGEMENT AGAINST PRIORITY CONCEPTS

65. Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Original Complaint as if fully and completely set forth herein.

66. On information and belief, Priority Concepts vicariously infringed Plaintiff's copyrighted Works.

67. Vicarious infringement of Plaintiff's right in and to the Works occurred because Priority Concepts has or had a right and ability to supervise the infringing acts of its agents and received a benefit or a direct financial interest therefrom.

68. On information and belief, Priority Concepts created, monitored, controlled, and/or edited its agents' reproductions, transmissions, and creation of derivative works of the Works, or had supervisory authority related to the same, throughout the relevant time period.

69. On information and belief, Priority Concepts received a direct financial benefit as a result of its agents' infringing activity. A financial benefit occurred at least because the Works were copied, transmitted, and used without permission by an agent of Priority Concepts to determine eligibility and calculate refunds for Priority Concepts' clientele. The Works were further incorporated into the training materials Priority Concepts used to train other employees and/or agents on how to use the Works to conduct the primary business object of Priority Concepts, calculating ERTC eligibility and refunds for its clients.

70. On information and belief, Priority Concepts is the owner of the Training Video and any documents, files, or software that the Works were incorporated into, and has the ability to control the content and activity thereon.

71. Priority Concepts' conduct constitutes vicarious infringement of Plaintiff's copyrights and Plaintiff's exclusive rights under the copyright in violation of 17 U.S.C. §§ 106

and 501.

72. As a direct and proximate result of Priority Concepts' vicarious infringement, Balance CFO has suffered and continues to suffer injuries and damages and is entitled to its actual damages and Priority Concepts' gross revenue or profits, direct or indirect, derived by Priority Concepts that are attributable to Priority Concepts' vicarious infringement of the Works, pursuant to 17 U.S.C. § 504(b).

WHEREFORE, Balance CFO demands judgement in its favor and against Defendants, including the following, on all Counts:

a. An award of Balance CFO's actual damages, including its own lost profits and disgorgement of Defendants' direct and indirect profits, in connection with Defendants' copyright infringement under 17 U.S.C. 504(b) in the amount to be determined at trial;

b. An award of Balance CFO's costs and expenses incurred in this action to enforce its rights in the copyrighted Works, pursuant to 17 U.S.C. § 505;

c. An award of interest, including pre-judgment interest, on all damages awarded;

d. A permanent injunction enjoining Defendants, their employees, agents, successors, affiliates, assigns, and all those in active concert and participation with Defendants, from: (1) directly, indirectly or contributorily infringing on any of Balance CFO's exclusive copyrights; or (2) continuing to market, offer, sell, dispose of, license, lease, transfer, publicly display, advertise, reproduce, develop or manufacture any works substantially similar to, derived from, or copies of Balance CFO's copyrighted works; or (3) participating or assisting in any such activity; and

e. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Balance CFO hereby demands a trial by jury pursuant to Rule 38, Federal Rules of Civil Procedure.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

Dated: February 23, 2024

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